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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,038	07/11/2003	Peter Andersen	SSI5AUSA	5215
270	7590	04/12/2006	EXAMINER	
HOWSON AND HOWSON SUITE 210 501 OFFICE CENTER DRIVE FT WASHINGTON, PA 19034			SWARTZ, RODNEY P	
			ART UNIT	PAPER NUMBER
			1645	

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/617,038	Applicant(s) ANDERSEN ET AL.	
	Examiner Rodney P. Swartz, Ph.D.	Art Unit 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12, 13 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 18-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-8 is/are rejected.
- 7) ☒ Claim(s) 9, 10, 12, 13, 16 and 17 is/are objected to.
- 8) ☒ Claim(s) 1-10, 12, 13 and 16-22 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/18/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicants' Response to Office Action, received 18 January 2006, is acknowledged. Claims 6, 7, 9, 10, 13, 16, and 17 have been amended. Claims 11, 14, and 15 have been canceled.

Claims 1-10, 12, 13, and 16-22 are pending. Claims 1-5 and 18-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention.

2. Claims 6-10, 12, 13, 16, and 17 are under consideration.

Rejections/Objections Moot/Withdrawn

3. The rejection of claims 14 and 15 under 35 U.S.C. 112, second paragraph, insufficient antecedent basis for the limitation "the effective component a non-pathogenic microorganism", is moot in light of the cancelation of the claims.

4. The rejection of claims 11, 14, and 15 under 35 U.S.C. 112, first paragraph, scope of enablement for vaccines comprising merely nucleic acids encoding polypeptides, is moot in light of the cancelation of the claims.

5. The objection to Figures 6A and 6B is withdrawn in light of the amendment of the Figures.

6. The objection to claim 10 is withdrawn in light of the amendment of the claim.

7. The objection to claim 13 is withdrawn in light of the amendment of the claim.

8. The rejection of claims 7 and 8 under 35 U.S.C. 112, second paragraph, insufficient antecedent basis for the limitation "polypeptides upregulated during the latent stage", is withdrawn in light of the amendment of the claims.

9. The rejection of claims 9 and 10 under 35 U.S.C. 112, second paragraph, as being indefinite, is withdrawn in light of the amendment of the claims.

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10. The rejection of claims 12 and 13 under 35 U.S.C. 112, second paragraph, as being indefinite, is withdrawn in light of the amendment of the claims.
11. The rejection of claim 16 under 35 U.S.C. 112, second paragraph, insufficient antecedent basis for the limitation "the antigen components", is withdrawn in light of the amendment of the claim.
12. The rejection of claim 17 under 35 U.S.C. 112, second paragraph, insufficient antecedent basis for the limitation "the amino acid sequence" is withdrawn in light of the amendment of the claim.
13. The rejection of claims 6-10, 12, 13, 16, and 17 under 35 U.S.C. 112, first paragraph, scope of enablement for vaccines comprising merely nucleic acids encoding polypeptides, is withdrawn in light of the amendment of the claims.

Rejections Maintained

14. The rejection of claims 6-8 under 35 U.S.C. 102(b) as being anticipated by Eisenberg et al (WO01/35317, 17 May 2001), is maintained.

Applicants argue that while Eisenberg et al describe *in silico* tests of sequences which are essential for growth and potential drug targets, they do not teach use of these sequences in an immunogenic composition or therapeutic fragment.

The examiner has considered applicants' argument, but does not find it persuasive. One of the embodiments of the claims is drawn to a composition comprising a polypeptide (SEQ ID NO:4) or fragment thereof. Thus, there is only one requirement for the claims, i.e., a composition comprising only one component.

Eisenberg et al do teach a composition comprising the single component, a polypeptide or fragment thereof (SEQ ID NO:4).

New Objection Necessitated by Amendment

15. Claims 9, 10, 12, 13, 16, and 17 are objected for dependence from rejected claims.

Conclusion

16. No claims are allowed.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. This application contains claim 1-5 and 18-22 which are drawn to a nonelected invention. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

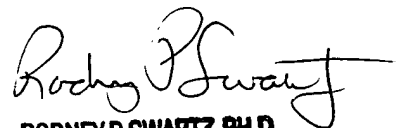
19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (571)272-0864.

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The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RODNEY P SWARTZ, PH.D
PRIMARY EXAMINER
Art Unit 1645

March 28, 2006